

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES D. RIEL,

Petitioner,

v.

RON BROOMFIELD, Warden,
California State Prison at San Quentin,

Respondent.

No. 2:01-cv-00507-MCE-DB

DEATH PENALTY CASE

ORDER

Petitioner, a state prisoner under sentence of death, seeks relief through an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In bringing the present Request for Reconsideration (ECF No. 602), Petitioner asks this Court to reverse the Magistrate Judge's July 8, 2020 Order (ECF No. 600) which denied Petitioner's Motion (ECF No. 590) to vacate the order giving Respondent the right to depose Petitioner. The Magistrate Judge also directed the parties to submit a joint statement concerning the conduct of said deposition and any subsequent evidentiary hearing.

In reviewing a magistrate judge's determination, the assigned judge shall apply the "clearly erroneous or contrary to law" standard of review set forth in Local Rule 303(f), as specifically authorized by Federal Rule of Civil Procedure 72(a) and

1 28 U.S.C. § 636(b)(1)(A).¹ Under this standard, the Court must accept the Magistrate
2 Judge's decision unless it has a "definite and firm conviction that a mistake has been
3 committed." Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for
4 So. Cal., 508 U.S. 602, 622 (1993). If the Court believes the conclusions reached by the
5 Magistrate Judge were at least plausible, after considering the record in its entirety, the
6 Court will not reverse even if convinced that it would have weighed the evidence
7 differently. Phoenix Eng. & Supply Inc. v. Universal Elec. Co., Inc., 104 F.3d 1137, 1141
8 (9th Cir. 1997).

9 After reviewing the entire file, this Court cannot say that the Magistrate Judge's
10 decision outlined above were clearly erroneous. As the Magistrate Judge noted,
11 Petitioner argues that his trial counsel was ineffective in failing to investigate and present
12 substantial evidence regarding Petitioner's organic, developmental, psychological, and
13 alcohol-related impairments, and in failing to prepare and consult with qualified experts.
14 Given those concerns, and the fact that Petitioner's own background in this regard was
15 consequently at issue, the Magistrate Judge reasonably concluded that Petitioner would
16 have relevant information. The Ninth Circuit has noted that good cause exists for
17 allowing the deposition of a petitioner in a capital case where the petitioner has alleged
18 ineffective assistance of counsel for failing to investigate the petitioner's family
19 background. Bean v. Calderon, 166 F.R.D. 452, 466 (E.D. Cal. 1996).

20 In addition, while true that Petitioner may raise Fifth Amendment concerns of self-
21 incrimination during such a deposition, the Magistrate Judge recognized that a protective
22 order to guard against any such potentiality was proper, with the Magistrate Judge
23 expressing willingness to be available by phone during the deposition to rule upon
24 objections in that regard that might arise. See Order, ECF No. 600, 5:10-16. Finally, the
25 parties themselves appear to have resolved this concern by agreeing in their

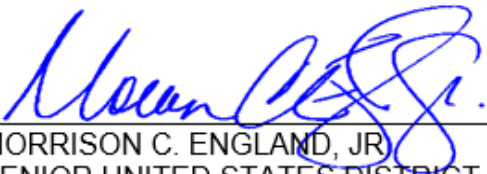
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27 ¹ Federal Rule of Civil Procedure 72(a) directs the district court judge to "modify or set aside any
28 portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Similarly, under
28 U.S.C. § 636(b)(1)(A), the district judge may reconsider any pretrial order "where it is shown that the
magistrate's order is clearly erroneous or contrary to law."

1 September 8, 2020 Joint Statement (ECF No. 603) that a prior protective order
2 pertaining to the scope of Petitioner's deposition would be sufficient, and by further
3 agreeing that the Magistrate Judge would indeed be available to rule upon objections
4 during Petitioner's deposition. See id. at 2:1-5.

5 For all these reasons, Petitioner's Request for Reconsideration (ECF No. 602) is
6 DENIED.

7 IT IS SO ORDERED.

8 Dated: March 22, 2022

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11 MORRISON C. ENGLAND, JR.
12 SENIOR UNITED STATES DISTRICT JUDGE
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